Ld. .1.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

A CIVIL REVISION APPLICATION NO. 87 OF 2002

Dr.G.S.Marathe .. Petitioner

vs

Mrs V.M.Gole ... Respondent

..

Mr.D.A.Bhagwat for Petitioner

Ms Suhasini Mutalik for Respondent

CORAM : D.G.KARNIK, J

DATE: 26TH AUGUST, 2004.

P.C.

1. By consent, taken up for final hearing.

2. By this petition the applicant challenges the order dated 6th September, 2001 passed by the Civil Judge, Senior Division holding that it had jurisdiction to entertain and try the suit The applicant also challenges the order dated 19th November, 2001 by the same Court rejecting the application for review of its earlier order.

3. The applicant is the defendant in Regular Civil

Suit No. 1066 of 2000 filed against him by the respondent. An application was made by the respondent at Exhibit 5 for interim injunction in the said suit. The applicant made an application under section 9 A of the Code of Civil Procedure (Maharashtra Amendment) contAnding that the Court of the Civil Court had no jurisdiction to entertain and try the suit. The trial Court framed a preliminary issue as to whether it had the jurisdiction to entertain and try the suit. The trial Court held that it had jurisdiction to entertain and try the suit. An application for review was filed by the applicant on the ground that no opportunity of adducing evidence was given to the applicant and in view of the decision of the Division Bench of this Court in Meher Singh vs Deepak Sawhney reported in 100 (3) BLR 840 opportunity of adducing evidence should have been given to the applicant. The review application was also rejected by an order dated 19th November, 2001.

4. Learned counsel for the respondent at the outset points out that the application under section 9 A of the Code of Civil Procedure itself was not maintainable. She invites my attention to a purshis dated 17th November, 2000 filed by the parties in the suit. By that purshis, the parties recorded their

mutual understanding and entered into an arrangement to be operative during the pendency of the suit. It was agreed without prejudice to the contentions of the parties that the arrangement as specified in the said purshis would govern the conduct of the parties during the pendency of the suit. The purshis also records that in view of the said understanding, order on Exhibit 5 (application for injunction) should be passed accordingly. A copy of the purshis has been annexed to the revision application at page 68. It is common ground that the application at Exhibit 5 filed by the respondent was not pressed and was not to be heard by the Court in view of the arrangement agreed to by the parties.

5. Section 9A of the Code of Civil Procedure as applicable in Maharashtra, prescribes that where at the hearing of an interim application, an objection as to the jurisdiction of the court to entertain the suit is taken by any of the parties to the suit the Court shall proceed to determine at the hearing of the interim application the issue about jurisdiction as a preliminary issue before granting or setting aside any order already granted for interim relief. As no application for interim relief was pending, the parties having entered into an arrangement to be

operative during the pendency of the suit, there was no occasion for the Court to decide the application under section 9A of the Code of Civil Procedure about the jurisdiction of the Court.

6. It also appears that the applicant was not given the opportunity of adducing evidence as to whether the Court had the jurisdiction and try the sut. As held by a Division Bench of this Court in Meher Sijgh vs Deepak Sawhney (supra) the parties must be given an opportunity of adducing evidence on the issue of preliminary jurisdiction.

7. In the circumstances, the order passed by the trial Court holding that it had the jurisdiction to try and entertain the suit without giving any opportunity of adducing evidence to the parties on the preliminary issue cannot be sustained.

8. For these reasons, Civil Revision Application is allowed. The impugned orders are set aside. As no application for any interim relief is pending before the Court; learned counsel for the applicant seeks leave to withdraw the application made by the applicant under section 9A. Leave granted. The application stands withdrawn.

9. Civil Revision Application disposed of in aforesaid terms.

D.G.KARNIK, J